

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WISMETTAC ASIAN FOODS, INC.

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630

and

ROLANDO LOPEZ

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630

Cases 21-CA-207463
21-CA-208128
21-CA-209337
21-CA-213978
21-CA-219153
21-CA-212285

**WISMETTAC ASIAN FOODS, INC.'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION ON REMAND**

Respectfully Submitted By:

Scott A. Wilson, Esq. (SBN 73187)
LAW OFFICES OF SCOTT A. WILSON
433 G Street, Suite 203
San Diego, California 92101-6972
Telephone: (619) 234-9011
Facsimile: (619) 234-5853
E-mail: scott@pepperwilson.com

Attorney for Respondent
WISMETTAC ASIAN FOODS, INC.

I. INTRODUCTION

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Wismettac Asian Foods, Inc. (hereinafter, "Respondent"), hereby takes exception to the below listed portions of the DECISION ON REMAND (hereinafter, the "Decision")¹, issued by Administrative Law Judge Eleanor Laws in the above captioned matter on January 19, 2021.

II. EXCEPTIONS TO THE DECISION RELATING TO THE ULP-CASE

<u>EXCEPTION NO.</u>	<u>DECISION PAGE:LINE</u>	<u>BASIS</u>	<u>EXCEPTION</u>
1	7:20-25	A B	Finding that Rolando Lopez (hereinafter, "Lopez") was engaged in protected concerted activity.
2	7:25-35	A B	Finding that Respondent did not have a good faith belief to discipline Lopez; and that Respondent violated the Act by doing so.
3	8:1-10	A B	Finding that Lopez' conduct at the December 5, 2017 meeting was protected activity, irrespective of whether or not he raised his voice.
4	8:15-25	A B	Finding that Respondent did not have a good faith belief that Susan Sands was frightened by the conduct of Lopez, and that Mr. Lopez' conduct was protected concerted activity.
5	8:15-25	A B	Finding that Respondent's discipline of Lopez was the result of Mr. Lopez' union activity and that Respondent had no honest belief of this conduct.
6	8:25-30	A B	Finding that Respondent violated the Act by disciplining Lopez while not having an honestly held belief that Mr. Lopez engaged in misconduct.
7	8:fn.12	B	Finding that witnesses Susan Sands, Anthony Vasquez and Frank Matheu overstated Lopez' conduct and tone of voice at the December 5, 2017 meeting.
8	9:5-10	A B	Finding that Lopez was engaged in concerted activity that Respondent was aware of.
9	9:10-15	A B	Finding that Lopez was engaged in concerted activity and Respondent showed animus against him by issuing discipline.
10	9:25-30	A B	Finding that there is strong evidence that Lopez was engaged in concerted activity and was disciplined for engaging in it.

¹ For the purposes of these exceptions "Supporting Brief" shall refer to Respondent's Brief in Support of Exceptions filed herewith; "A" shall denote that exception is taken on the basis that the portion of the Decision excepted to is unsupported by law; and "B" shall denote that exception is taken on the basis that the portion of the Decision excepted to is unsupported by substantial evidence.

<u>EXCEPTION NO.</u>	<u>DECISION PAGE:LINE</u>	<u>BASIS</u>	<u>EXCEPTION</u>
11	9:35-40	A B	Finding that Respondent's discipline of Lopez was a "pretext" for his involvement in union activities.
12	10:1-5	A B	Finding that Susan Sands' testimony was not compelling and/or credible as to Lopez engaging in misconduct; and that her testimony was evidence of a "pretext" to discipline Lopez.
13	10:10-15	A B	Finding that the General Counsel met the burden to establish that Respondent violated Section 8(a)(1) of the Act.
14	10:15-20	A B	Concluding that the discipline of Lopez was a violation of Section 8(a)(1) and 8(a)(3) of the Act.
15	10:20-25	A B	Concluding that Respondent committed an unfair labor practice affecting commerce within the meaning of Section 2(6) and 2(7) of the Act.
16	10:25-30	A B	Ordering Respondent to cease and desist from unfair labor practice and take affirmative action.
17	10:30-35	A B	Ordering Respondent to remove the counseling from Lopez' file and rescind any reference to his discipline while notifying him in writing of the same.
18	11:1-5	A B	Ordering Respondent to cease and desist from disciplining employees because of engaging in concerted activities.
19	11:5-10	A B	Ordering Respondent to cease and desist from restraining and coercing employees in exercise of rights guaranteed by the Act.
20	11:10-15	A B	Ordering Respondent to remove Lopez's discipline from his file and notify him of the same.
21	11:15-25	A B	Ordering Respondent to post a notice for 60 days at Respondent's facility.
22	11:30-35	A B	Ordering Respondent to notify the Region of actions take to comply with the order.

Dated: March 1, 2021

Respectfully Submitted By:

LAW OFFICES OF SCOTT A. WILSON



Scott A. Wilson, Esq.
Attorney for Respondent
WISMETTAC ASIAN FOODS, INC.

SCOTT A. WILSON

ATTORNEY AT LAW
Practice of Labor and Employment Law

OFFICE 433 G Street, Suite 203, San Diego, CA 92101
TEL (619) 234-9011 | CELL (619) 851-8441 | FAX (619) 234-5853
EMAIL scott@pepperwilson.com

CERTIFICATE OF SERVICE

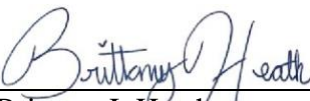
I, Brittany J. Heath, declare and state as follows:

1. I am at least 18 years of age, not a party to this action. I am employed at the Law Offices of Scott A. Wilson, which is located in San Diego County, California. My business address is 433 G Street, Suite 203, San Diego, CA 92101. My e-mail address is sawfrontoffice@pepperwilson.com.
2. I hereby certify that on October 30, 2019, a copy of **WISMETTAC ASIAN FOODS, INC.'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION ON REMAND** in Cases 21-CA-207463, 21-CA-208128, 21-CA-209337, 21-CA-213978, 21-CA-219153, 21-CA-212285, and 21-RC-204759 has been submitted by E-Filing to the National Labor Relations Board, Office of the Executive Secretary, in Washington DC.
3. On March 1, 2021, I served by e-mail, a copy of the document listed in item 2 on the parties as follows:

NAME OF PERSON SERVED	ELECTRONIC SERVICE ADDRESS
Elvira T. Pereda, Esq. Counsel for the General Counsel National Labor Relations Board, Region 21	elvira.pereda@nlrb.gov
Thomas Rimbach, Esq. Counsel for the General Counsel National Labor Relations Board, Region 21	thomas.rimbach@nlrb.gov
Renée Q. Sánchez, Esq. Counsel for the Union, Teamsters Local 630	rqs@sdlaborlaw.com
Rolando Lopez	cateoria@yahoo.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on March 1, 2021.

By: 
Brittany J. Heath
Assistant to Scott A. Wilson